



The Appeals Board finds that the issue of accidental injury arising out of and in the course of employment is one of those listed in K.S.A. 44-534a as jurisdictional and is subject to review by the Appeals Board.

Claimant alleges injury to her back while assisting a resident to turn over in bed on July 7, 1994. The pain experienced by the claimant was not initially severe but, as claimant was walking down the hall subsequent to the injury, the pain became worse and claimant began experiencing radiculopathy into her right leg. Claimant advised a fellow worker by the name of Kathy Inkle of her problem. Ms. Inkle assisted claimant in turning the remainder of her patients during that shift.

Later claimant advised the nurse on duty, Mickey Kinzle, of the problem and an Incident Report was created. She also advised Ms. Kinzle that she was going to the emergency room. Ms. Kinzle acknowledged that would be the best thing for her to do. The emergency room medical provider referred claimant to Dr. Vito J. Carabetta for follow-up treatment. Claimant also received medical care from Dr. William D. Smith of Bartlesville, Oklahoma, who diagnosed lumbosacral strain with a possible herniated lumbar disc. Additional testing was recommended.

The respondent attempted to deny benefits to the claimant alleging claimant initially failed to report the turning of the resident at the time the incident report was created. Claimant simply advised the respondent that the problem occurred while walking down the hall. The claimant testified that, at the time the incident report was completed, she was in severe pain and was not thinking clearly. Respondent further contested claimant's compensability due to a medical report which indicated claimant had suffered prior back problems. Claimant denied this advising the only prior problems she had was a temporary popping in her joints, which caused her no permanent problem.

K.S.A. 44-501 and K.S.A. 44-508(g) make it the worker's responsibility to establish her right to an award of compensation by proving the various conditions on which the worker's right depends, by a preponderance of the credible evidence. The Appeals Board finds that the testimony of the claimant is supported by a preponderance of credible evidence. Claimant's description of the injury coupled with her timely creation of the incident report persuades the Appeals Board that claimant's injury did arise out of and in the course of her employment with the respondent.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of December 29, 1994, of Administrative Law Judge James R. Ward should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Carlton W. Kennard, Pittsburg, KS  
Stephen P. Doherty, Kansas City, KS  
James R. Ward, Administrative Law Judge  
George Gomez, Director